

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

BARRY LINTON,

Plaintiff

v.

NEW YORK LIFE INSURANCE AND ANNUITY  
CORPORATION,

Defendant.

—

C.A. No. 04-11362-RWZ

## DEFENDANT'S MOTION TO STAY FURTHER DISCOVERY

Defendant New York Life Insurance and Annuity Corporation (“New York Life”) hereby respectfully moves this Court for an Order staying further discovery pending a decision regarding Defendant’s Motion to Dismiss the Complaint. Defendant’s Motion to Dismiss the Complaint presents substantial grounds for dismissal of all claims asserted by plaintiff.

New York Life has served on plaintiff the disclosures called for by Fed. R. Civ. P. 26(a). In addition, New York Life has served on plaintiff documents as described in its disclosures. In light of the pending motion dismiss, however, further discovery would unnecessarily burden New York Life with expenses that it may not have to bear should the motion to dismiss be granted.

New York Life moves to stay further discovery on the following grounds:

1. First, pursuant to Fed. R. Civ. P. 26(f), the Court has discretion to stay discovery for “good cause.” Good cause is present in this instant case where the pending motion to dismiss may dispose of the entire case.

2. Second, further discovery would impose an undue burden on New York Life, where it would have to bear the costs of discovery that it may not, after all, have to bear should its motion to dismiss be granted.

In support of this motion and the arguments described above, the Court is referred respectfully to: (1) Defendant's Memorandum of Law in Support of Its Motion to Stay Further Discovery; (2) Defendant's Motion to Dismiss the Complaint and documents filed in support thereof.

Defendant New York Life respectfully requests that this Court hear oral argument on the Motion inasmuch as oral presentation and questioning by the Court will assist it in adjudicating the issues raised herein.

WHEREFORE, New York Life respectfully request that this Court enter an order: Staying further discovery pending a decision on Defendant's Motion to Dismiss the Complaint and granting such further relief as it may deem just and equitable.

Respectfully submitted,

NEW YORK LIFE INSURANCE AND  
ANNUITY CORPORATION

By its attorneys,

/s/ Levina Wong

John D. Donovan, Jr. (BBO # 130950)

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Dated: February 9 2005

**CERTIFICATE OF COMPLIANCE WITH LR 7.1**

I hereby certify that counsel for Defendant New York Life Insurance and Annuity Corporation conferred with counsel for Plaintiff Barry Linton in a good faith effort to resolve the issues set forth herein.

/s/ Levina Wong  
Levina Wong

**CERTIFICATE OF SERVICE**

I hereby certify that on February 9 2005, I served a copy of Defendant's Motion to Dismiss the Complaint, by hand, upon P. Andy Henderson, Looney & Grossman, LLP, 101 Arch Street, Boston, MA 02110, attorney for Plaintiff Barry Linton.

/s/ Levina Wong  
Levina Wong